



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/165861

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Langlade County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on May 21, 2015, at Antigo, Wisconsin. At the request of petitioner, the record was held open until June 4, 2015 for the submission of a new physician letter regarding his inability to perform any type of substantial gainful employment. On June 4, 2015, petitioner faxed to DHA a copy of a May 27, 2015 letter from [REDACTED], M.D. which is received into the hearing record.

The issue for determination is whether petitioner is disabled for purposes of state medical assistance eligibility.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 32 year old resident of Langlade County.
2. The petitioner worked as an [REDACTED] from 2010 to 2013.

3. During 2013, petitioner resigned from his employment due to his inability to handle the stress or anxiety of his employment, and significant allergies and sensitivities to work environments. The petitioner has not worked since 2013.
4. Petitioner has a diagnosis of MEN2A, a condition which causes tumors of the endocrine system. The petitioner required surgical removal of his thyroid and left adrenal gland (adrenalectomy). He has severe allergies (including asthma), environmental sensitivities, and depression/anxiety problems.
5. On or about August 28, 2014, petitioner applied for MA-Disability with the Disability Determination Bureau (DDB).
6. The DDB sent a February 23, 2015 notice to the petitioner stating that he was found not disabled due to his conditions were not severe enough to prevent him from working.
7. On March 24, 2015, petitioner appealed that denial of his disability to DHA.
8. The petitioner's physician, [REDACTED], sent the following May 27, 2015 letter to DHA:

[REDACTED] [REDACTED] is a patient under my care. He has a history of MEN2A (which is a condition that causes tumors of the endocrine system, and is fatal if untreated) which has caused him to have removal of his thyroid and adrenalectomy. I think the alterations of his endocrine system have led to persistent anxiety and ADHD, which at times have proved difficult to treat, and make work prohibitive. In addition to this, the patient suffers from significant allergies, making a variety of work environments either difficult or unsuitable to the patient. He has a history of anaphylaxis related to different common foods in addition to his allergies.

In terms of his ADHD/anxiety, the patient's ability to function in a work setting is severely impaired, and the patient suffers from episodes of panic and from a sense of feeling overwhelmed. These symptoms persist in spite of treatment, and I suspect are related to disruptions of his endocrine system related to his condition.

See above Preliminary Recitals.

DISCUSSION

To be eligible for MA, an adult under age 65 must be disabled, blind, pregnant, or the caretaker of minor children. Wis. Stat., §§49.46(1) and 49.47(4). To qualify as disabled, a person must meet the definition of that term as it is used for SSI purposes. Wis. Stat., §49.47(4)(a)4.

The applicable SSI disability standards are found in the Code of Federal Regulations, Title 20, Part 416, Subpart I, and by reference Appendices 1 and 2, Subpart P, Part 404. Specifically, to be disabled means to be unable to engage in any substantial gainful activity because of a medically determinable physical or mental condition which will, or has, lasted at least twelve months. To determine if this definition is met, the applicant's current employment status, the severity of her medical condition, and her ability to return to vocationally relevant past work or to adapt to new forms of employment are evaluated in that sequence. 20 C.F.R. §§416.905 and 416.920.

The SSI regulations require a five-step process. First, if the person is working at a job that is considered to be substantial gainful employment, she/he is found to be not disabled without further review. If he is not working, the DDB must determine if he has a "severe impairment." A severe impairment is one that limits a person's ability to do basic work activities. 20 C.F.R. §416.921. The DDB found that petitioner is not engaged in an SGA and that he has a severe impairment.

The third step is to determine if the impairment meets or equals a listed impairment found at Appendix 1, Subpart P, Part 404. The listings are impairments that are disabling without additional review. 20 C.F.R. §416.925(a).

The fourth and fifth steps occur if the impairments do not meet the listings, which they individually do not in this case. The DDB must determine whether the person is able to perform past jobs. If not, then the agency must determine if the person can do *any other types of work in the society* that would be considered substantial gainful activity. 20 C.F.R. §416.960. The petitioner is unable to return to his past work as an [REDACTED]

The DDB concluded that physically petitioner was capable of doing medium exertional level work. DDB also questionably concluded that petitioner receives counseling for “mild” depression which allegedly was not a “significant” problem, and was “doing well” in that counseling as of about December, 2014. It acknowledged that petitioner should avoid airborne irritants.

However, [REDACTED]’s convincing letter as his primary physician described petitioner with significant medical and psychological conditions, and allergies/environmental sensitivities which in their totality make substantial gainful employment highly unlikely. See Finding of Fact #8 above. Furthermore, the petitioner’s testimony during the hearing was convincing especially regarding his inability to handle any kind of stress in the workplace and his inability to work in basically all environments due to his severe allergies.

This appeal is a very unique case. It is true that petitioner is able physically to do work. But, his ability to perform a job of any kind is so limited by his medical, psychiatric and allergies/environmental conditions that, in the most practical and realistic sense, he is not able to work a job in society. [REDACTED] stated in pertinent part of his May 27, 2015 letter that: a) petitioner’s endocrine system has led to persistent anxiety and ADHD, which . . . make work prohibitive; b) petitioner has significant allergies making a variety of work environments either difficult or unsuitable to petitioner; and c) petitioner’s ADHD anxiety and his panic attacks (in spite of treatment) severely impair his ability to function in a work setting. As a result, petitioner is unable to work any job at the level of substantial gainful employment and requiring or approaching an 8 hour workday. Under the specific facts of this case, I find that petitioner is not able to do his past work or any other type of work in society, and is disabled for purposes of state medical assistance based upon the totality of the petitioner’s medical, mental health conditions, and allergies/environmental sensitivities.

CONCLUSIONS OF LAW

Petitioner is disabled for purposes of State Medical Assistance based upon the totality of the petitioner’s medical, mental health conditions, and allergies/environmental sensitivities.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department and its county agent with instructions to process petitioner’s MA eligibility based upon his August 28, 2014 application, with a finding that petitioner is disabled, within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

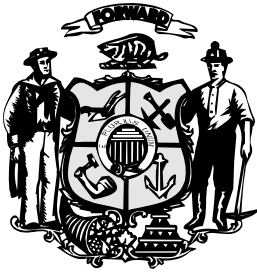
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 6th day of July, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 6, 2015.

Langlade County Department of Social Services
Disability Determination Bureau